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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GIOVANNI KURTZE,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

Case No. 2:17-cv-02888-JCM-(BNW)

ORDER

Presently before the court is Magistrate Judge Leen's report and recommendation ("R&R"). (ECF No. 3). No objection was filed and the time to do so has passed.

Judge Leen recommends denying *pro se* plaintiff Giovanni Kurtze's application to proceed *in forma pauperis*. Federal law prohibits a prisoner from proceeding *in forma pauperis* if he has, on three or more prior occasions, filed a federal action while incarcerated that was dismissed for failure to state a claim upon which relief may be granted. 28 U.S.C § 1915(g). Instead, the prisoner must pay the full \$400 filing fee unless he is under imminent danger of serious physical injury. *Id.* Plaintiff has, on at least three occasions, filed civil actions while incarcerated that were dismissed for failure to state a claim upon which relief can be granted. (ECF No. 3). In his complaint, plaintiff alleges defendants violated his Fifth Amendment prohibition against double jeopardy in his capital murder case. These allegations do not show that plaintiff is under imminent danger of serious physical injury and should be allowed to proceed *in forma pauperis*.

1 This court “may accept, reject, or modify, in whole or in part, the findings or
2 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party timely
3 objects to a magistrate judge’s report and recommendation, then the court is required to
4 “make a de novo determination of those portions of the [report and recommendation] to
5 which objection is made.” 28 U.S.C. § 636(b)(1).

6 Where a party fails to object, however, the court is not required to conduct “any
7 review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474
8 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not
9 required to review a magistrate judge’s report and recommendation where no objections
10 have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003)
11 (disregarding the standard of review employed by the district court when reviewing a
12 report and recommendation to which no objections were made).

13 Nevertheless, this court conducted a *de novo* review to determine whether to adopt
14 the recommendation of the magistrate judge. Upon reviewing the recommendation and
15 attendant circumstances, this court finds good cause appears to adopt the magistrate
16 judge’s findings in full.

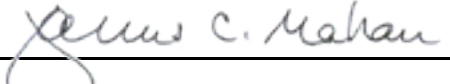
17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Judge Leen’s R&R
19 (ECF No. 3) be, and the same hereby is, ADOPTED.

20 IT IS FURTHER ORDERED that plaintiff’s complaint is hereby DISMISSED without
21 prejudice.

22 The clerk is instructed to enter judgment and close the case accordingly.

23 DATED March 16, 2020.

24 
25 UNITED STATES DISTRICT JUDGE